Article 17.

Trial in Superior Court.

§ 15-162. Repealed by Session Laws 1973, c. 1286, s. 26.

§ 15-162.1. Repealed by Session Laws 1971, c. 1225.

§§ 15-163 through 15-165. Repealed by Session Laws 1967, c. 218, s. 4.

§ 15-166. Exclusion of bystanders in trial for rape and sex offenses.

In the trial of cases for rape or sex offense or attempt to commit rape or attempt to commit a sex offense, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the courtroom all persons except the officers of the court, the defendant and those engaged in the trial of the case. (1907, c. 21; C. S., s. 4636; 1973, c. 1141, s. 14; 1979, c. 682, s. 3; 1981, c. 682, s. 5.)

§ 15-167. Extension of session of court by trial judge.

Whenever a trial for a felony is in progress on the last Friday of any session of court and it appears to the trial judge that it is unlikely that such trial can be completed before 5:00 P.M. on such Friday, the trial judge may extend the session as long as in his opinion it shall be necessary for the purposes of the case, but he may recess court on Friday or Saturday of such week to such time on the succeeding Sunday or Monday as, in his discretion, he deems wise. The trial judge, in his discretion, may exercise the same power in the trial of any other cause under the same circumstances, except civil actions begun after Thursday of the last week. The length of time such court shall remain in session each day shall be in the discretion of the trial judge. Whenever a trial judge continues a session pursuant to this section, he shall cause an order to such effect to be entered in the minutes, which order may be entered at such time as the judge directs, either before or after he has extended the session. (1830, c. 22; R.C., c. 31, s. 16; C.C.P., s. 397; Code, s. 1229; 1893, c. 226; Rev., s. 3266; C.S., s. 4637; 1961, c. 181; 1973, c. 1141, s. 15.)

§ 15-168. Justification as defense to libel.

Every defendant who is charged by indictment with the publication of a libel may prove on the trial for the same the truth of the facts alleged in the indictment; and if it shall appear to the satisfaction of the jury that the facts are true, the defendant shall be acquitted of the charge. (R.C., c. 35, s. 26; Code, s. 1195; Rev., s. 3267; C.S., s. 4638.)

§ 15-169. Conviction of assault, when included in charge.

On the trial of any person for any felony whatsoever, when the crime charged includes an assault against the person, it is lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding; and when such verdict is found the court shall have power to imprison the person so found guilty of an assault, for any term now allowed by law in cases of conviction when the indictment was originally for the assault of a like character. (1885, c. 68; Rev., s. 3268; C.S., s. 4639; 1979, c. 682, s. 4.)

§ 15-170. Conviction for a less degree or an attempt.

Upon the trial of any indictment the prisoner may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime. (1891, c. 205, s. 2; Rev., s. 3269; C.S., s. 4640.)

§ 15-171. Repealed by Session Laws 1953, c. 100.

§ 15-172. Verdict for murder in first or second degree.

Nothing contained in the statute law dividing murder into degrees shall be construed to require any alteration or modification of the existing form of indictment for murder, but the jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree. (1893, c. 85, s. 3; Rev., s. 3271; C.S., s. 4642.)

§ 15-173. Demurrer to the evidence.

When on the trial of any criminal action in the superior or district court, the State has introduced its evidence and rested its case, the defendant may move to dismiss the action, or for judgment as in case of nonsuit. If the motion is allowed, judgment shall be entered accordingly; and such judgment shall have the force and effect of a verdict of "not guilty" as to such defendant. If the motion is refused and the defendant does not choose to introduce evidence, the case shall be submitted to the jury as in other cases, and the defendant may on appeal urge as ground for reversal, the trial court's denial of his motion without the necessity of the defendant's having taken exception to such denial.

If the defendant introduces evidence, he thereby waives any motion for dismissal or judgment as in case of nonsuit which he may have made prior to the introduction of his evidence and cannot urge such prior motion as ground for appeal. The defendant, however, may make such motion at the conclusion of all the evidence in the case, irrespective of whether or not he made a motion for dismissal or judgment as in case of nonsuit theretofore. If the motion is allowed, or shall be sustained on appeal, it shall in all cases have the force and effect of a verdict of "not guilty." If the motion is refused, the defendant may on appeal, after the jury has rendered its verdict, urge as ground for reversal the trial court's denial of his motion made at the close of all the evidence without the necessity of the defendant's having taken exception to such denial. (1913, c. 73; Ex. Sess. 1913, c. 32; C.S., s. 4643; 1951, c. 1086, s. 1; 1973, c. 1141, s. 16.)

§§ 15-173.1 through 15-174. Repealed by Session Laws 1977, c. 711, s. 33.

§ 15-175. Repealed by Session Laws 1973, c. 1286, s. 26.

§ 15-176. Prisoner not to be tried in prison uniform.

It shall be unlawful for any sheriff, jailer or other officer to require any person imprisoned in jail to appear in any court for trial dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with shaven or clipped head. And

no person charged with a criminal offense shall be tried in any court while dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with head shaven or clipped by or under the direction and requirement of any sheriff, jailer or other officer, unless the head was shaven or clipped while such person was serving a term of imprisonment for the commission of a crime.

Any sheriff, jailer or other officer who violates the provisions of this section shall be guilty of a Class 1 misdemeanor. (1915, c. 124; C.S., s. 4646; 1993, c. 539, s. 296; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 15-176.1. District attorney may argue for death penalty.

In the trial of capital cases, the district attorney or other counsel appearing for the State may argue to the jury that a sentence of death should be imposed and that the jury should not recommend life imprisonment. (1961, c. 890; 1973, c. 47, s. 2.)

§ 15-176.2. Repealed by Session Laws 1973, c. 44, s. 1.